U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29534724

Date: FEB. 8, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a violin restorer, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner had not established eligibility as an individual of extraordinary ability, either as the recipient of a major, internationally recognized award, or by meeting at least three of the ten regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that

petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115, 1121 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner proposes to continue to work as a violin restorer in [redacted] Massachusetts.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have satisfied the criteria listed below:

- Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i);
- Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii);
- Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi);
- Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii); and
- Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

In response to the Director's request for evidence (RFE), the Petitioner claimed and submitted evidence in support of the additional criterion at 8 C.F.R. § 204.5(h)(3)(iii), published material about the individual in certain media.

The Director concluded that the Petitioner satisfied two criteria relating to receipt of lesser nationally or internationally recognized awards for excellence and high salary or other significantly high remuneration for services. However, for the reasons discussed below, we do not agree with the Director that the Petitioner fulfilled the awards criterion. On appeal, the Petitioner contends that the Director ignored all of the evidence and asserts that she meets six of the evidentiary criteria. After

reviewing all of the evidence in the record, we conclude that she does not meet the requisite three criteria, and thus does not meet the initial evidentiary requirements for the requested classification.[1]

> *Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

To fulfill this criterion, the Petitioner must demonstrate that she not only received prizes or awards, but also that they are nationally or internationally recognized for excellence in the field of endeavor. The Director determined that the Petitioner submitted sufficient evidence to satisfy this criterion. However, we disagree and withdraw the Director's conclusion. Although the Petitioner documented her receipt of prizes or awards, she did not submit sufficient documentary evidence establishing that that they were nationally or internationally recognized for excellence. When determining whether an individual has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, we consider factors such as: the criteria used to grant the awards or prizes; the national or international significance of the awards or prizes in the field; and the number of awardees or prize recipients, as well as any limitations on competitors. *See generally 6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policymanual.

In support of this criterion, the Petitioner submitted copies of her two certificates from the [redacted], a printout about [redacted] letters confirming that she obtained such awards, and an article from the [redacted]. However, the Petitioner did not submit sufficient evidence to establish that they are nationally or internationally recognized awards for excellence. Although the Petitioner submitted background information regarding the awarding entity, she has not submitted evidence about their level of recognition.[2] For example, she submitted one article from the local section of the [redacted] which states that the Petitioner "received a double certificate of merit, one for tone and one for workmanship, for the cello she entered at [redacted]."[3] The article does not provide any additional information about the certificates to establish that they are nationally or internationally recognized prizes or awards for excellence. Without more, the Petitioner has not met her burden of proof and established the requisite level of recognition of her certificates.

> *Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner maintains that she meets this criterion based on membership with the [redacted]. In order to satisfy this criterion, the Petitioner must show that

[1] While we do not discuss each piece of evidence individually, we have reviewed and considered the record in its entirety.
[2] The regulation specifically requires national or international recognition of the prize or award; the reputation of the awarding entity does not suffice. The *USCIS Policy Manual* acknowledges this distinction, indicating that "[*c*]*ertain* awards from well-known national institutions" "*may*" qualify under 8 C.F.R. § 204.5(h)(3)(i). *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.
[3] National or international media coverage is one possible measure of the national or international recognition of a prize or award. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.[4]

While the Petitioner provided a letter from the president of [redacted], she did not submit their constitution or bylaws, or other documentation showing their official membership requirements. We acknowledge that the president's letter and the [redacted] website outlines the rigorous process to become a member, including that candidates must have at least nine years of professional experience and that they must submit a sample of their work which is reviewed and evaluated by the Board of Governors. However, neither the letter nor the website indicate that [redacted] requires outstanding achievements of their members.

Accordingly, the Petitioner did not demonstrate she fulfills this criterion.

> *Published material about the individual in professional or major trade publications or other major media, relating to the individual's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

To determine whether the Petitioner has submitted evidence that meets the plain language of this criterion, we first determine whether the published material was related to the person and the person's specific work in the field for which classification is sought. The published material should be about the person, relating to the person's work in the field. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535 (2012) (holding that articles about the Iranian Table Tennis Team which only briefly mentioned the person were not about him.); *see also Negro-Plumpe v. Okin*, 2008 WL 106997512 (D. Nevada 2008) (concluding that articles focusing on a character played by the person or the show he performed in were not about the person). Published material that includes only a brief citation or passing reference to the person's work is not "about" the person. Second, we determine whether the publication qualifies as a professional publication, major trade publication, or major media publication. In evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).[5]

On appeal, the Petitioner contends that the Director ignored this criterion, and we agree. She asserts that she meets it due to the article in the local section of the [redacted] about her winning the [redacted] awards. Specifically, the article states that she won two certificates from the [redacted] and that her instruments are owned by several members of the [redacted] While the article briefly mentions the Petitioner, we cannot conclude that it is "about" her within the meaning of the criterion. Further, the Petitioner has not established that it is a major media publication. While the Petitioner provided information about the [redacted] including its circulation information from 2009 to 2015, she did not offer circulation data for 2018, the year the article was published, or provide comparative circulation statistics or other evidence to demonstrate that the [redacted] is major media.

[4] *See generally 6 USCIS Policy Manual*, supra, at F.2(B)(1).
[5] *Id.*

Accordingly, the Petitioner has not established that she meets this criterion.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner asserts that she qualifies for this criterion based on her article in [redacted] and states that it "is indeed a major trade publication" as "it is the "only monthly magazine for stringed instruments."" While the Petitioner has provided information about [redacted] including its intended audience, the fact that [redacted] may be the only monthly magazine for stringed instruments does not, by itself, establish it is a major trade publication. Further, we are not required to rely on the self-promotional material of the publisher and "we may require more than the publication's own say-so that it is 'major.'" *Cf. Krasniqi v. Dibbins*, 558 F. Supp. 3d 168, 185 (D.N.J. 2021) (citing *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media)).

Regarding the Petitioner's claim that her article is scholarly, outside of academia, we consider a "scholarly article" to be written for learned persons in that field. "Learned" is defined as "having or demonstrating profound knowledge or scholarship." Learned persons include all persons having profound knowledge of a field. Here, the Petitioner has not established that her article was written for learned persons. Instead, it appears to be a "how-to" article about a manual method of recording arching profiles on violins. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). For all of the above reasons, the Petitioner has not established that she meets this criterion.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

In order to meet this criterion, the Petitioner must establish that she not only played a leading or critical role, but also that the organization or establishment for which she played that role is recognized as having a distinguished reputation. The plain language of the regulation requires the organization or establishment to have a distinguished reputation, defined as "marked by eminence, distinction, or excellence or befitting an eminent person."[6]

On appeal, the Petitioner points to the article in the local section of the [redacted] as "objective, documentary evidence" of the distinguished reputation of her employer, [redacted] Specifically, the Petitioner emphasizes that the article states that [redacted] "cellos sell for $50,000." However, this evidence does not sufficiently demonstrate that the company is marked by eminence, distinction, or excellence. The Petitioner does not provide evidence to establish the significance of selling cellos for $50,000 and explain how it demonstrates that the company has a distinguished reputation. Without more, the evidence is insufficient to establish that the company has a distinguished reputation as required by the

[6] *Id.*

regulation at 8 C.F.R. § 204.5(h)(3)(viii). Therefore, the Petitioner has not established that she meets this criterion.

B. O-1 Approval

The record reflects that the Petitioner previously received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Sunlift Int'l v. Mayorkas, et al.*, 2021 WL 3111627 (N.D. Cal. 2021); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. We have long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work as a violin restorer is indicative of the required sustained national or international acclaim, consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field and are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.